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CORRESPONDENCE WITH THE NETHERLANDS GOVERNMENT RESPECTING DEFENSIVELY ARMED BRITISH MERCHANT VESSELS <sup>1</sup>

No. 1

*Sir Edward Grey to Mr. Chilton*

(Telegraphic.)

*Foreign Office, August 8, 1914.*

You should lose no time in explaining to Netherlands Government that British armed merchant vessels are armed solely for purposes of defense, in case they raise any question as to their position. Existing rules of international law grant the right of defense to all merchant vessels when attacked. There can be no right on the part of a neutral government to order the internment of British-owned merchant vessels, nor to require them before putting to sea to land their guns, because the duty of such neutral government to order the immediate departure or internment of belligerent vessels is limited to actual and potential warships, and as Great Britain does not admit that any Power has the right to convert merchant vessels into warships on the high seas, British merchant vessels that are in foreign ports can not be so converted.

As German rules permit German merchant vessels to be converted on the high seas, we maintain our claim to have them interned unless the neutral government are prepared to assume responsibility for a binding assurance that no such conversion shall take place.

No. 2

*Mr. Chilton to Sir Edward Grey. — (Received August 10)*

(Telegraphic.)

*The Hague, August 9, 1914.*

I communicated contents of your telegram of 8th August to Minister for Foreign Affairs this morning. His Excellency tells me, after consultation with Minister of Marine, that Netherlands Government agree to your demand as to treatment of British and German merchant

<sup>1</sup> British Parliamentary Paper, Miscellaneous No. 14 (1917). [Cd. 8690.]

vessels, but adds that Netherlands officials must examine British vessels for form's sake.

His Excellency is sending me written statement<sup>1</sup> tomorrow, which I will telegraph if necessary; if not, will forward tomorrow night by post.

## No. 3

*Mr. Chilton to Sir Edward Grey*

(Telegraphic. Extract.)

*The Hague, August 10, 1914.*

Naval attaché had a conversation today with Dutch Minister of Marine on the subject of armed merchantmen.

Latter said that Netherlands Government had already issued precise instructions not to admit to Dutch territorial waters any merchantmen that were capable of performing any warlike act, and that they were therefore placed in a very difficult position by the request of the British Government asking neutrals to differentiate between auxiliary cruisers and merchant vessels defensively armed. He himself fully realized the difference, but feared the people might not, and that if any modification was now made in these instructions the government might be accused by the Dutch navy and therefore by the nation, which up to now had been somewhat afraid of a violation of their territory by England, of departing from its attitude of strict neutrality. This would have the effect of throwing Dutch nation into arms of Germany.

## No. 4

*Sir Edward Grey to Sir A. Johnstone*

*Foreign Office, March 7, 1915.*

SIR: In view of the menace from German submarines, it is possible that an increase may take place in the number of defensively armed British merchant ships, and that among them may be some which normally trade with Netherlands ports.

I should be glad to learn as soon as possible whether the Netherlands Government still hold the strong objections to the entry of such vessels into their ports which they held at the beginning of the war.

I am, etc.

E. GREY.

<sup>1</sup> This statement was never received.

## No. 5

*Sir A. Johnstone to Sir Edward Grey. — (Received April 12)*

*The Hague, April 8, 1915.*

SIR: On receipt of your dispatch of the 7th ultimo respecting the possible increase of defensively armed British merchant vessels, some of which normally trade with the Netherlands, I addressed a note to M. Loudon expressing the hope that such vessels would be permitted to enter Dutch ports.

I have now the honor to inclose copy of his Excellency's reply, from which you will perceive that the Netherlands Government will not allow such vessels access to its ports.

I have had a conversation with M. Loudon on this subject, and although his Excellency appeared to regret the necessity, he was quite firm in maintaining that, according to his government's interpretation of international law, the admission of armed merchantmen, even if armed for defense only, was impossible.

I pointed out to his Excellency that the submarine warfare as waged by the Germans was contrary to all dictates of law and humanity, but I could not move him from his position.

I have, etc.

ALAN JOHNSTONE.

Inclosure in No. 5

*Netherlands Minister for Foreign Affairs to Sir A. Johnstone*  
(Translation)

*The Hague, April 7, 1915.*

SIR: In your note of the 13th March last your Excellency was good enough to inform me that it might become necessary to provide certain British merchant vessels which sail regularly between the Netherlands and Great Britain with an armament that would only be used by them for defensive purposes. At the same time you expressed the hope that the Queen's Government would see no objection to admitting vessels thus armed into Dutch ports.

I have the honor, in reply, to inform your Excellency that the Dutch proclamation of neutrality prohibits,<sup>1</sup> as a general rule, belligerent

<sup>1</sup> See Appendix, p. 232. Text of declaration printed in Supplement to this JOURNAL, Vol. 9 (1915), p. 81.

warships as well as vessels assimilated to warships from entering Dutch ports, roadsteads, and territorial waters. As far as Dutch territory in Europe is concerned, this rule admits of no exception, except in the case of damage or by reason of stress of weather.

The Queen's Government are of the opinion that the observation of a strict neutrality obliges them to place in the category of vessels assimilated to belligerent warships those merchant vessels of the belligerent parties that are provided with an armament and that consequently would be capable of committing acts of war.

I have therefore the honor to inform your Excellency that the Queen's Government do not consider themselves entitled to admit into their ports the armed merchant vessels alluded to in your Excellency's above-mentioned communication.

While expressing my regrets at not being able to accede to the request which your Excellency was good enough to transmit, I am, etc.

J. LOUDON.

No. 6

*Sir Edward Grey to Sir A. Johnstone*

*Foreign Office, June 9, 1915.*

SIR: With reference to your dispatch of the 8th April last, I transmit to you herewith duplicate copies of a memorandum and a pamphlet<sup>1</sup> by Dr. A. Pearce Higgins on the practice of arming merchant ships in self-defense.

You should communicate to the Netherlands Government a copy of this pamphlet and a type-written copy of the memorandum, and should inform them that the government of every neutral state except the Netherlands, with which the question has been raised, including Spain, the United States, and the principal South American Republics, have recognized the legality of arming merchant ships in self-defense, and are admitting ships so armed into their ports on the same footing as ordinary merchant vessels. You should point to the support widely given to this traditional practice by international jurists before the war and urge that in view of the German claim to sink all British ships regardless of the lives of the crew and passengers it is more than ever necessary to insist on all rights of self-defense, including the elementary right of a human being to disable his intending murderer.

<sup>1</sup> Pamphlet not printed.

You should, in conclusion, impress upon the Netherlands Government that if they persist in the view which they have hitherto adopted, there is likely to be an appreciable diminution in the regular traffic of British ships with Netherlands ports.

I am, etc.

E. GREY.

Inclosure in No. 6

*Memorandum on Defensively Armed Merchant Ships by Dr. Pearce Higgins, Professor of International Law at Cambridge and Lecturer at the Royal Naval War College.*

As there appears to be some doubt as to the legal status of merchant ships which are armed in self-defense, the following statement may be of interest and assistance to shipowners and shipmasters:

The practice of arming ships in self-defense is a very old one. There are Royal Proclamations from the time of Charles I ordering merchant ships to be armed, and to do their utmost to defend themselves against enemy attacks. During the Napoleonic wars the prize courts of Great Britain and the United States recognized that a belligerent merchant ship had a perfect right to arm in her own defense (*The Catherine Elizabeth* (British) and *The Nereide* (United States)). The right of a belligerent merchant ship to carry arms and to resist capture is definitely and clearly laid down in both of the cases just cited.

Chief Justice Marshall of the United States, in the case of *The Nereide*, said: "It is true that on her passage she had a right to defend herself, and defended herself, and might have captured an assailing vessel."

In modern times the right of resistance of merchant vessels is also recognized by the United States Naval War Code, which was published in 1900, by the Italian Code for the Mercantile Marine, 1877, and by the Russian Prize Regulations, 1895.

Writers of weight and authority in Great Britain, the United States, Italy, France, Belgium, and Holland also recognize this right. The late Dr. F. Perels, who was at one time legal adviser to the German Admiralty, quotes with approval Article 10 of the United States Naval War Code, which states: "The personnel of merchant vessels of an enemy, who in self-defense and in protection of the vessel placed in their charge resist an attack, are entitled to the status of prisoners of war."

The most recent authoritative pronouncement on this subject comes from the Institute of International Law, a body composed of international lawyers of all nationalities. This learned society, which meets generally once a year in different countries to discuss and make proposals on points of international law, at its meeting in 1913 at Oxford prepared a Manual of the Laws of Naval Warfare which was adopted with unanimity. Article 12 of this Manual, which is in French, may be translated as follows:

Privateering is forbidden. Except under the conditions specified in Article 5 and the following articles, public and private ships and their crews may not take part in hostilities against the enemy.

*Both are, however, allowed to employ force to defend themselves against the attack of an enemy ship.*

The crews of enemy merchant ships have for centuries been liable to be treated as prisoners of war whether they resisted capture or not.

Crews who forcibly resist visit and capture, can not, if they are unsuccessful, claim to be released; they remain prisoners of war.

Defensively armed merchant ships must not assume the offensive against enemy merchant ships. They are armed for defense, not for attack, but if they are attacked and they are able successfully to repel the attack and even to capture their assailant, such capture is valid; the captured ship is good prize as between the belligerents.

There is some authority, as in the Italian Code and Russian Prize Regulations, for saying that an armed merchant ship has a right to go to the assistance of other national or allied vessels attacked, and assist them in making a capture. But this is by no means such a well-established rule as the rule of self-defense. It will in nearly all cases be much more important for a defensively armed ship to get safely away with her cargo than to go to the assistance of another merchant ship, for in this case the safety of both may be placed in jeopardy.

The position of the passengers on a defensively armed ship, if no resistance is made, is the same as if they were on an unarmed merchant ship. If, however, the armed ship resists, they will, naturally, have to take their chance of injury or death. Unless they take part in the resistance, they are not liable, if the ship is captured, to be taken prisoners, merely because of the fact of resistance having been offered by the ship.

## No. 7

*Sir A. Johnstone to Sir Edward Grey. — (Received August 2)*

*The Hague, July 31, 1915.*

SIR: With reference to your dispatch of the 9th ultimo, I have the honor to transmit herewith copy of a note from M. Loudon giving the views of the Netherlands Government on the question of the admission of armed merchant vessels into Netherlands ports.

You will observe that M. Loudon maintains the attitude which has hitherto been adopted by the Netherlands Government to this question and states that it would be contrary to the policy of strict neutrality observed by the Netherlands Government to modify their attitude in this respect.

I have, etc.

ALAN JOHNSTONE.

Inclosure in No. 7

*Netherlands Minister for Foreign Affairs to Sir A. Johnstone*  
(Translation)

*The Hague, July 31, 1915.*

SIR: In my letter of the 7th April last I had the honor to inform your Excellency that the Queen's Government do not consider themselves entitled to admit into their ports, roadsteads, and territorial waters, except in case of damage or stress of weather, the armed merchant vessels referred to by your Excellency in your official note of the 13th March last. I pointed out that the observance of a strict neutrality obliges the Netherlands Government to place in the category of vessels assimilated to belligerent warships alluded to in the proclamation of neutrality those merchant vessels of belligerent nationality which are provided with an armament, and which consequently would be capable of committing acts of war.

In his note of the 12th June last Mr. Chilton returned to this subject. He specially called my attention to the rule of international law which permits belligerent merchant vessels to defend themselves against enemy warships, and he was good enough to add to his note a memorandum and a pamphlet in support of his observations.

I have read these documents with much interest. However, there seems to me to be no connection between the above-mentioned rule



and the question whether the admission into neutral ports of a certain category of vessels of belligerent nationality is or is not compatible with the observance of a strict neutrality. This latter question lies within the province of the law of neutrality. On the other hand, the rule invoked by Mr. Chilton is part of the law of war.

A belligerent merchant vessel which fights to escape capture or destruction by an enemy warship commits an act the legitimacy of which is indeed unquestionable, but which is none the less an act of war.

The Queen's Government are of the opinion that it would be contrary to the strict neutrality which they have determined to observe from the beginning of the war not to assimilate to a belligerent warship, within the terms of the proclamation of neutrality of the 4th August, 1914, any belligerent merchant vessel armed with the object of committing, in case of need, an act of war.

Accept, etc.

J. LOUDON.

No. 8

*Sir E. Grey to Sir A. Johnstone*

*Foreign Office, September 1, 1915.*

SIR: I have received your dispatch of the 31st July informing me of the negative reply made by the Netherlands Government to the arguments put forward by His Majesty's Government in favor of the right of British merchant ships carrying armament for defensive purposes to enter Netherlands ports.

I request that you will inform the Netherlands Government that His Majesty's Government have learnt of their decision with the keenest regret. You should add that, apart from the intrinsic fact of this decision, His Majesty's Government can not refrain from expressing the strongest dissent from the view on which it is apparently based, namely, that it is part of the duties of a neutral state to treat merchant ships armed for self-defense on the same footing as warships.

In making the above communication you should say that, while adhering in every way to the views which they have already expressed on the subject, His Majesty's Government do not wish to continue the discussion of it with the Netherlands Government at the present time.

I am, etc.

E. GREY.

## No. 9

*Sir W. Townley to Mr. Balfour*

(Telegraphic.)

*The Hague, March 6, 1917.*

I learn that the British steamship *Princess Melita*, with a gun mounted aft, arrived yesterday, contrary to regulations of Netherlands Government, at the Hook of Holland, and was ordered out again and left. She however returned later with a request for water, after having dismounted her gun.

As captain of *Princess Melita* feared German submarines, he refused to leave port again without convoy. He states that two enemy submarines attacked the vessel yesterday.

Dutch Minister for Foreign Affairs with whom I have taken the matter up, says, that if gun is put off, *Princess Melita* may enter port and proceed in due course to sea again.

## No. 10

*Sir W. Townley to Mr. Balfour*

(Telegraphic.)

*The Hague, March 7, 1917.*

Dutch authorities ordered captain of *Princess Melita* to proceed outside territorial waters, where he dropped his gun overboard. He then returned to port and went on to Rotterdam. Vessel will load cargo there, and eventually proceed with convoy to sea.

## No. 11

*Mr. Balfour to Sir W. Townley*

(Telegraphic.)

*Foreign Office, March 10, 1917.*

Your telegram of 7th March: Exclusion of defensively armed merchant ships from Dutch ports.

The Dutch admit that it is perfectly permissible by international law for merchant ships to carry guns for defensive purposes (see Orange Book, French version, p. 163), but by a rule of their own making adopted since the war began they exclude such ships from their harbors. Since the rule was adopted, circumstances have changed. On the one hand, the Germans have proclaimed their intention to sink at sight all mer-

chant ships going to or coming from Great Britain. It is not pretended by the Dutch that this practice can be justified by any rule of international law. On the other hand, it has been demonstrated that the possession of a gun adds greatly to the safety of a merchant vessel. His Majesty's Government, therefore, are clearly of opinion that, in the interests of impartial neutrality no less than of friendship, the Dutch Government should relax their rule excluding defensively armed merchant vessels from their ports. Otherwise they are assisting German submarine lawlessness and increasing the danger to our merchant vessels.

Further, at this very time the Netherlands Oversea Trust and the Dutch Government are asking that Dutch vessels shall not be compelled to go into a port of the United Kingdom for the exercise by His Majesty's Government of the belligerent right of visit and search, although the Netherlands Oversea Trust vessels have solemnly agreed to such procedure. They are asking us to forgo both our belligerent and contractual rights so as to increase the safety of their vessels at the same time as they are insisting by their own rules on increasing the danger of ours.

That is unreasonable, and the Dutch Government can not complain if we say that we can make no concessions to them unless they are prepared to show greater good-will towards us.

You should point all this out to the Dutch Government.

No. 12

*Sir W. Townley to Mr. Balfour. — (Received April 11)*

*The Hague, April 6, 1917.*

SIR: I have the honor to transmit herewith copy of a note from the Netherlands Government setting forth their reasons for refusing to allow armed merchantmen to enter Netherlands territorial waters.

I have, etc.

WALTER TOWNLEY.

Inclosure in No. 12

*Netherlands Minister for Foreign Affairs to Sir W. Townley*

(Translation)

*The Hague, April 4, 1917.*

SIR: The regulation of the Netherlands Government regarding armed merchant vessels was, as far back as 1915, the object of correspondence between the British Legation and the Queen's Government. In this connection I venture to refer to Sir Alan Johnstone's letters of the 13th March and the 12th June, 1915, and mine of the 7th April and the 31st July, 1915.

The memorandum which your Excellency was good enough to transmit to me on the 12th March last intimates, without, however, furnishing reasons in support, that there is a contradiction between, on the one hand, the Netherlands Government's recognition of the legitimacy of armed resistance by a belligerent merchant vessel to an enemy warship, and, on the other, the resolution which they took at the beginning of the war not to admit armed merchant vessels of belligerent ownership within Dutch jurisdiction.

I had already, in my above-mentioned notes, had the honor to draw Sir Alan Johnstone's attention to the fundamental distinction existing between the principles of the law of war, which decide the legitimacy of the resistance offered by belligerent merchant vessels to enemy warships, and the principles of the law of neutrality, on which depends the point whether the admission into neutral ports of warships of belligerent nationality and of certain categories of vessels assimilated thereto, in particular, armed merchantmen, is or is not compatible with the observance of a strict neutrality.

It is by applying these principles of neutrality that the Netherlands Government have forbidden as a general rule, save for certain exceptions, the presence within their jurisdiction of belligerent warships and vessels assimilated to warships; from the beginning they have placed in this last category those merchant vessels of belligerent Powers which are provided with an armament and are consequently capable of committing acts of war.

In fact, a state in the very special geographical position in which the Netherlands find themselves in relation to the belligerent nations, could not insure respect for the neutrality of the territory under its

jurisdiction, except by forbidding access to this territory not only to warships but also to every armed vessel. This exclusion, on the one hand, safeguards the country against any concealed aggression. It prevents, on the other hand, acts of violence between belligerents from being committed within our territorial waters. Lastly, it offers to each belligerent the most effective guarantee that their adversaries will not succeed in utilizing some part of this territory as a base for naval operations.

If the Queen's Government, in default of conventional regulations regarding the special question of armed merchantmen, have been obliged themselves to formulate a rule, this rule in none the less an application of the fundamental principles of neutrality and can not be qualified as an arbitrary measure.

The Queen's Government are well aware of the perilous situation in which British merchant vessels find themselves when — like those of neutrals — they are subjected without means of defense to the attacks of German submarines. They do not hesitate to admit the perfect right of such vessels to arm themselves. But the considerations which in August, 1914, determined the attitude of the government still hold good. What, however, renders the question far more serious is the fact that it would be a matter of revoking at this moment a rule of neutrality which was established at the very beginning of the war, and was duly notified later to the two belligerent parties.

Nothing could be more contrary to the very principle of neutrality than to revoke during the course of a war, and at the demand of one of the belligerents, a rule of neutrality which, owing to the course of events, whatever they may be, proves to be disadvantageous to that belligerent only.

This revocation would unquestionably assume the character of a favor, and would consequently be incompatible with the impartiality which is the distinctive feature of neutrality.

If the British Government would be good enough to place themselves in the position of a neutral government, they would realize without difficulty that the Netherlands Government could not modify their line of conduct without compromising the neutrality which they have adopted since the beginning of the war and which they are determined to observe without failing. Your Excellency's Government will further recognize that it was the British delegates who, at the Second Peace Conference, laid particular stress on the fact that the

English doctrine does not admit that a state has the right of modifying its rules of neutrality in the course of a war, except with a view to rendering them *more* strict. (*Actes*, Vol. I, p. 326; Vol. III, p. 621.)

As I have had the occasion of saying to your Excellency, it is certainly not due to want of friendship or of good-will towards the British Government that the Queen's Government are obliged to maintain their attitude. They therefore can not believe that the British Government, for the sole reason that the Netherlands Government are unwilling to depart from the line of strict neutrality that they have traced for themselves, would refuse to maintain in favor of Dutch shipowners the facilities which have already been granted them for the examination of their vessels in a British overseas port, and which are as effective, for the purpose of the exercise of the right of search, as examination carried out in a port of the United Kingdom.

The antithesis put forward in your Excellency's memorandum with regard to the facilities asked for by Dutch shipowners at the very moment when the Netherlands Government refuse to grant a favor to British vessels is therefore difficult to uphold. For, according to the law of nations, the British Government are under no obligation to effect the examination of Dutch vessels in a port of the United Kingdom, instead of carrying it out on the high seas or in a British overseas port. On the other hand, by admitting at the present moment British armed vessels within Dutch jurisdiction, the Queen's Government would be gravely lacking in observance of an obligation which flows from their neutrality.

The withdrawal of the said facilities, which would not be dictated by any necessity of control, would have the character of an unjustified measure of reprisal, since no unfriendly or unjust action on the part of the Netherlands would have caused it.

The Queen's Government make a most serious appeal to the British Government's sentiment of equity in begging them not to hinder the provisioning of the Dutch nation, which is ever becoming more difficult, by measures in no way proportionate to their own in refusing to admit armed merchantmen into Dutch ports. For it can not be denied that if Dutch ships carrying provisions enter a port of the United Kingdom, whether of their own free will or because forced to do so, they run the greatest risk of being sunk without mercy by the enemies of Great Britain. The population of the Netherlands, depending as it does to such a large extent for its provisioning on overseas products, would eventually be the victim.

The Queen's Government are persuaded that Great Britain, in order to avoid this unfortunate consequence, which she doubtless can not desire, will maintain the calling facilities recently granted to shipping, which are duly appreciated as much by shipowners as by the Netherlands Government themselves.

J. LOUDON.

No. 13

*Lord Robert Cecil to Sir W. Townley*

*Foreign Office, May 18, 1917.*

SIR: 1. The note from the Netherlands Government, setting forth their reasons for refusing to allow armed merchantmen to enter Netherlands territorial waters, transmitted to me in your dispatch of the 6th April, 1917, has received the most careful consideration.

2. The main argument of this note repeats in substance the contention advanced in the answer contained in Sir A. Johnstone's dispatch of the 8th April, 1915, that the observance of a strict neutrality imposes on the Netherlands Government the duty of treating armed belligerent merchant vessels as ships assimilated to warships within the meaning of Article 4 of the proclamation of neutrality issued by the Netherlands Government at the outbreak of the present war in 1914. I propose, therefore, to consider this argument in detail.

3. The terms of Article 4 of the proclamation of neutrality make no specific mention of merchantmen which are armed for defensive purposes: it merely prohibits the presence within the jurisdiction of any belligerent warship or vessel assimilated to a warship. To interpret these words as covering British merchant ships engaged in commercial operations carrying a gun for purposes of self-defense is neither the natural nor the reasonable construction of the language, and I think it may be shown that it is unsound, for in no sense is an armed merchant ship, such as those with which we are now dealing, assimilated to a warship.

4. The essential idea of a warship is that it is equipped for the purpose of exercising the rights which appertain exclusively to a belligerent: it is armed for the purpose of facilitating the exercise of those rights, that is to say, for purposes of offense. The British merchant vessels which carry a gun are armed solely for purposes of defense. The right of self-defense is not limited to belligerents, it may be exercised by the ships of all nations without restriction, whether neutral

or belligerent, and a merchant ship armed for purposes of defense has, therefore, nothing in common with a belligerent warship and is in no way assimilated to it. Nor does such a vessel possess any of the distinguishing features which, according to No. 7 of the conventions which were signed at The Hague in 1907, a warship ought to possess. Such a vessel is neither under the direct authority, the immediate control, nor the responsibility of the Power whose flag it flies; it bears none of the external marks which distinguish the warships of that nationality; the commander is not in the service of the state nor duly commissioned; nor are the crew subject to military discipline. In no single respect is a merchant ship which is armed solely for purposes of defense assimilated to a warship or capable of committing an act of war.

5. It may be well to consider briefly what are the vessels one might assume were intended to be covered by the phrase in Article 4 of the proclamation of neutrality — “vessels assimilated to warships.” The Netherlands Government will no doubt remember that during the Second Peace Conference the British delegation put forward a proposal for extending the meaning of the term “warship” so as to make it cover certain categories of merchant ships not pursuing ordinary trading avocations, but in attendance upon a belligerent fleet, or engaged in duties bringing them into direct communication with the belligerent fighting ships. The proposal was ultimately withdrawn, but it gave rise to some very interesting discussions at that conference, and was the subject of a report on these “vaisseaux auxiliaires,” which will be found on p. 862 of Volume 3 of the Proceedings of the Conference. Under this proposal warships were to consist of “navires de combats” and “vaisseaux auxiliaires.” With regard to the second category, the report contains the following passage:

Sur ce point, son Excellence Lord Reay a expliqué le point de vue de sa délégation, qui est *d'assimiler* aux navires militaires d'une force navale, quant au traitement auquel ils sont exposés, les navires de commerce, soit employés au service de cette flotte pour un usage quelconque, soit placés sous ses ordres, soit servant à des transports de troupes, dans tous les cas, prêtant ainsi à la flotte une assistance évidemment hostile. . . . Ce n'est pas le commerce avec le belligérant qui est visé, c'est le fait pour un navire d'être au service de ce belligérant, à quelque titre, d'ailleurs, que ce soit.

6. In view of the discussions at The Hague, the natural interpretation of Article 4 of the proclamation of neutrality is that it is the vessels included in category (b) of the British proposal which are meant



to be covered by the words “(navires de guerre ou) *navires y assimilés*,” not vessels engaged in purely commercial avocations which are incapable of performing an act of war, and which are in no sense employed in assisting a belligerent or in any service connected with the conduct of hostilities.

7. The argument of the Netherlands Government is that the observance of a strict neutrality obliges them to treat these defensively armed ships as assimilated to warships. The only rules of neutrality which a neutral state is obliged to enforce are those which are obligatory under the rules of international law, and the Netherlands Government will scarcely maintain that it is the principles of international law which require it to exclude from its ports a merchant ship armed for purposes of self-defense. The surest guide to the principles of international law is to be found in the practice of states, and during the present struggle no other neutral government (except perhaps that of President Carranza in Mexico) has found itself obliged by the rules of international law to deny the use of its ports to such vessels.

8. If further proof is wanted that the principles of international law do not necessitate any such regulation as that which the Netherlands Government are now insisting on, it is sufficient to mention that the practice of arming merchant ships is by no means new, and yet no state has hitherto thought it necessary to adopt the attitude which the Netherlands Government are adopting now, and no writer of repute has suggested that a neutral state is bound to do so. The Netherlands Government will, I feel sure, admit that whatever other reasons there may be for their present attitude, international law did not compel them to adopt it.

9. The enactment, if any there be, which excludes from Netherlands ports merchant vessels armed solely for defense is a rule of internal legislation and nothing more. His Majesty's Government do not question the right of the Netherlands Government to enact rules and regulations as to the use of Dutch ports in the time of war which may be stricter and more far-reaching than any which international law imposes upon them the obligation to enact. Their right to do so flows from their attributes as a sovereign state, but there are certain limitations on the legislative freedom of a sovereign state. Treaty obligations must be borne in mind, and the rules imposed for the purposes of neutrality must be impartial, for impartiality is of the essence of neutrality.

10. The practice of encouraging merchant vessels to carry arms was revived by His Majesty's Government as a measure of protection to British shipping against the raiders which it was evident the German Government intended to create in time of war by converting their merchant ships into warships on the high seas. To the latter government it was an inconvenient move, as it would interfere with the depredations which these invalidly converted warships would be able to commit. The German publicists were therefore instructed by their government immediately to deny altogether the right of a merchant ship to defend herself from a belligerent warship, and that view the enemy government, regardless of the precedents of the past, has continued to maintain. If this view prevailed, arms would be valueless to a merchant ship, even though their presence is legitimate, because she could not make use of them. By this means the arming of merchantmen would be discouraged, and, in fact, so far as is known to His Majesty's Government, the few German merchant vessels which venture on a voyage to foreign ports are not armed. A rule which closes Dutch ports to merchant ships armed in self-defense must operate with complete want of equality and impartiality as between the two belligerents because it opens Dutch ports to all German merchant vessels without opening them to all British vessels. A British merchant vessel will not, in fact, be allowed that freedom of trade with Holland which the commercial treaty between the two countries guarantees to it unless it deprives itself of the safeguards which, by the law of its own country, not less than by international law, it is entitled to adopt.

11. The note of the 4th April suggests four reasons why it is incumbent on the Netherlands Government to close their ports to armed merchant ships: That the geographical position of Holland prevents her insuring respect for her neutrality unless such a rule is adopted; that it safeguards the country against concealed aggression; that it prevents acts of violence between belligerents within the jurisdiction; and that it guarantees each of the belligerents against use by the other of Dutch territory as a base of naval operations.

12. As to these various arguments, I may say that the particular way in which the geographical position of Holland is exceptional or differs from that of other neutral countries limitrophe with the enemy countries is not explained in the note, and His Majesty's Government feel unable to appreciate that argument. Merchant ships engaged

in commerce are singularly unsuited for committing acts of aggression in foreign ports; but if one were minded to do so, an unarmed vessel would be almost as capable of committing such acts as an armed one. No foreign Power acts on the assumption that foreign merchant vessels will so abuse the hospitality of its ports as to commit acts of aggression, and if there were any real reason to apprehend such conduct on the part of British vessels, the exclusion of those only which are armed for purposes of defense would do nothing to safeguard the country from it. With regard to the third argument, if belligerents were anxious to commit acts of violence against each other, they would scarcely resort to the use of defensively armed ships for the purpose. As to the last argument, the obligation to prevent the use of their territory as a base of naval operations is incumbent on all neutral countries. His Majesty's Government are unable to see how exclusion of defensively armed merchant ships could conduce towards this result; but, even if it were so, a rule which no other Power has found it necessary to adopt can not be required for the purpose.

13. The last contention with which I find it necessary to deal is that it would constitute a serious infraction of the obligations of the Netherlands Government if they were to vary their rules of neutrality during the continuance of the present hostilities. Reference is made in support of this argument to the statement of the British delegates to the Second Peace Conference in 1907 that they could scarcely conceive of a case where it would be necessary for a neutral to modify the regulations which it had issued for the maintenance of its neutrality with a view to rendering them *less* strict.

14. This contention of the Netherlands Government might have more weight if they had issued any regulation which dealt specifically with the admission to their ports of merchant ships armed for defense. As I have pointed out, Article 4 of the proclamation of neutrality does not, on any fair construction of its terms, cover such vessels, for in no single respect are they assimilated to warships. The more cogent answer, however, to this contention is that all the principles laid down at The Hague presupposed the conduct of hostilities by the belligerents in accordance with the laws of war. They can not apply in their entirety in the presence of such circumstances as the ruthless destruction by enemy submarines of all merchant ships, whether neutral or belligerent, without warning, and irrespective of the service in which they were engaged. Under such conditions the power to exercise

the right of self-defense becomes a matter of cardinal importance and to insist on maintaining the misapplication to merchant ships engaged on purely commercial operations of a neutrality provision relating to vessels assimilated to warships in the face of such action on the part of the enemy is not an observance of neutral duty: it is a passive but none the less real and effective coöperation with the enemy in his campaign of maritime atrocity.

15. The Netherlands Government will, of course, maintain their present interpretation of the Article 4 of their proclamation of neutrality so long as they think it expedient to do so; but on their side His Majesty's Government can only declare that as the extension of that article to merchant ships armed solely for purposes of defense is incompatible with any fair construction of its terms, and as the closing of Netherlands ports to such merchant ships on the plea of neutrality is not required by the law of nations or the practice of other states, and as the provision when regarded as a municipal enactment is inconsistent with the treaty rights of Great Britain and operates exclusively to the advantage of the enemy, they must hold the Netherlands Government responsible for all losses to British ships trading with Holland so long as those vessels are, if they enter a Netherlands port, obliged to forgo their right to provide themselves with means of self-defense.

16. You will read this dispatch to the Minister for Foreign Affairs and will leave with him a copy.

I am, etc.

ROBERT CECIL.

No. 14

*Sir W. Townley to Mr. Balfour*

*The Hague, June 20, 1917.*

SIR: I have the honor to transmit herewith copy of a note from the Netherlands Minister for Foreign Affairs, setting forth the views of the Netherlands Government with regard to belligerent armed merchantmen.

I have, etc.

WALTER TOWNLEY.

Inclosure in No. 14

(Translation)

*Ministry of Foreign Affairs,*

*The Hague, June 18, 1917.*

SIR: On the 4th instant your Excellency was good enough to transmit to me a note of the British Government, dated the 18th May last, regarding the regulation applied by the Queen's Government to armed belligerent merchant vessels. This note, in the first place, points out that Article 4 of the Netherlands declaration of neutrality does not specially mention merchant vessels armed for defensive purposes, but prohibits the admission within Netherlands jurisdiction of warships or of vessels assimilated to warships. The words "assimilated to warships" should, according to the British Government, be interpreted in the light of the proposal made by the British delegation at the Second Peace Conference (Vol. III, *Actes et Documents*, p. 862) relative to merchant vessels "employed in the service of a naval force for any purpose, whether placed under its orders, or serving for the transport of troops, in any case thus affording to the fleet assistance of a clearly warlike character." They could not be applied to a merchant vessel armed with a gun solely for purposes of defense. A merchant vessel, even if provided with an armament, does not possess any of the distinguishing features which, according to the Seventh Hague Convention of 1907 (Articles 1, 2, and 3), a warship ought to possess. Besides, the essential character of a warship is that it is armed for purposes of offense, whilst a merchant vessel, even if armed, is incapable of committing an act of war or of assisting one of the belligerents.

The Queen's Government are unable to admit the accuracy of the above reasoning.

In employing, in Article 4 of the declaration of neutrality, the term "vessels assimilated to warships," the Queen's Government simply intended to exclude from their jurisdiction any vessel, the admission of which would be contrary to their duties as a neutral government, and which would menace the security of the kingdom. It is quite clear that there is no question here — as the remark of the British Government would lead one to believe — of a *technical* term, the use of

which, in a sense other than that attached to it by the British delegation at the Second Peace Conference in a totally different connection, would be excluded.

The assimilation contemplated in the declaration of neutrality does not indeed, and can not, refer to anything but the admission within Dutch jurisdiction. It does not, and can not, confer on the vessels to which it alludes the character of warships. The question whether these vessels do or do not possess the distinguishing marks of warships does not therefore arise.

The Queen's Government are unable to share the British Government's point of view, according to which vessels employed in commerce are, even if armed with a gun, incapable of committing an act of war or of assisting one of the belligerents. An armed merchant vessel undeniably possesses in its armament not only a means of defense, but a means of attack as well.

The British Government then criticize the argument of the Queen's Government that the observation of a strict neutrality obliges them to treat armed merchantmen as assimilated to warships from the point of view of admission into their waters. In their opinion, the surest guide to the principles of international law is to be found in the practice of the various states, and during the present war no other neutral government but the Queen's Government — except, perhaps, that of President Carranza — have found themselves obliged by the rules of international law to deny to the vessels in question the entry into their territorial waters.

The Queen's Government would remark, by the way, that the Governments of Sweden and Denmark have made no pronouncement upon the question, while the Government of the United States, according to Mr. Lansing's declaration in his note of 18th January, 1916, to the ambassadors of the belligerent Powers, were convinced of the correctness of the point of view according to which armed merchant vessels should be treated by neutrals as vessels of war. But apart from this, the Queen's Government, in default of any conventional regulations on this special point, are called upon to decide for themselves what, in the circumstances in which they are placed, the duties of neutrality impose upon them.

The British Government again remark that, in employing their right to issue rules regarding the admission of vessels into their ports, the Queen's Government should have regard for the obligations derived

from treaties and should take care that the rules in question are impartial, impartiality being the dominant principle of neutrality. As German merchant vessels are not armed, the rule relative to the admission of vessels within Dutch jurisdiction would open Dutch ports to all German merchantmen and not to all British merchantmen. It would thus operate in an unequal manner and with partiality. Further, British merchant shipping would not even enjoy any more the treatment assured to it by the treaty of commerce which exists between the Netherlands and Great Britain.

Now, as the British Government were aware, the Queen's Government have, since the beginning of the war, considered it necessary to close their ports to all armed belligerent merchant vessels. At that time it was not out of the question that German merchantmen would arm themselves just as British merchantmen have since done. The measure then operated in a manner absolutely impartial to all. During the course of the war, circumstances have led British merchant vessels to provide themselves with an armament in the interests of their security. If at the present moment the rule does not affect the two belligerent parties in an equal manner, the fault is evidently not due to the Queen's Government, but to the force of circumstances, by which it so often happens that the application of a rule of neutrality affects in a number of cases one of the belligerents only, without there being any question of partiality in favor of its adversary.

As regards the treaty of commerce existing between Great Britain and the Netherlands, it does not (as I have had the honor to observe recently to your Excellency in an analogous case) imply for the contracting governments the obligation to receive *in all circumstances* into their ports, the vessels flying the flag of the other contracting party. If the British Government did not share this opinion, they could not justify various measures that they have taken in the course of the war, and which are not expressly provided for in the treaties; I quote as an example the closing of certain ports of the United Kingdom to Dutch shipping, an exception of which no mention is made in the treaty in question.

The British Government further examine the four reasons which, as explained in my letter of the 4th April last, decided the Netherlands Government to close their ports to armed belligerent merchant vessels.

The first of these four reasons was the very special geographical position in which the Netherlands find themselves in relation to the

belligerent countries. The British Government declare that they are unable to appreciate how this position of the Netherlands is exceptional or differs from that of other neutral countries.

It is sufficient to recall the fact that no other neutral country is situated so close as the Netherlands to the principal theater of the war on land and on sea, and that consequently no other country ran the same degree of risk of seeing its coastal waters, not to mention the rivers which flow into these waters, utilized by the belligerent Powers. These considerations held good especially at the beginning of the war before Belgium was a belligerent party, and when it might consequently be expected that British as well as German merchantmen would use the port of Antwerp. They lost nothing of their value when Belgium became a belligerent party, and when at first only English vessels, and after the capture of Antwerp German vessels only, could enter or leave that port. Lastly, the risk of an encounter near the Dutch coast between the naval forces of the two belligerent parties and their merchant vessels is obvious.

The second of the four reasons was that the exclusion of armed merchantmen assured the security of the Netherlands against any concealed aggression.

The British Government hold the view that vessels destined for commerce are singularly unsuited for committing acts of aggression in foreign ports; but that, if there were an intention of committing such acts, an unarmed vessel would be no less capable of them than an armed one.

Now, if armed merchantmen had been admitted into Dutch ports, the possibility of a large number of these vessels collecting in Dutch waters, and therefore of a real danger, was in no way unlikely.

The third reason was that the regulation issued prevents acts of violence from being committed between the belligerents in our territorial waters. The British Government state that if the belligerents desire to commit acts of violence against each other, they will certainly not resort to the use of defensively armed ships for this purpose.

In putting forward the reason in question, the Queen's Government did not have in view the case of belligerents coming into Dutch ports with the fixed intention of committing acts of violence against their adversaries, but the case of merchant vessels of the opposing sides unexpectedly finding themselves at the same moment in those ports. If they were unarmed, they would not be tempted to commit acts of



violence against each other; but, having an armament, they might doubtless be so tempted.

The fourth reason was that the measure adopted by the Queen's Government offers the most effective guarantee to each of the belligerents that their adversary will not succeed in utilizing any part of Dutch territory as a base of naval operations. This reason does not appear to be clear to the British Government.

It is evident that armed merchantmen, being capable of committing acts of war, could abuse neutral territory as a base of action against the enemy quite as well as warships properly so called.

Lastly, the British Government take up the argument of the Queen's Government that it would be contrary to the very principle of neutrality to revoke in the course of a war and at the demand of one of the belligerents a rule of neutrality which owing to the course of events proves to be disadvantageous to that belligerent only, an argument which the Queen's Government thought would be all the more conclusive in that it was the British delegates who, at the Second Peace Conference, laid particular stress on the fact that English doctrine does not recognize that a state has the right to modify its rules of neutrality during the course of a war, except with a view to rendering them *more* strict.

The British Government are of the opinion that this argument would have more weight if Article 4 of the declaration of neutrality had made special mention of armed merchant vessels.

The revocation of a rule of neutrality established since the beginning of the war, whether it be expressed word for word in the declaration of neutrality or not, is none the less contrary to the principles of the law of nations. The British Government's remark is still less well-founded, as they have been aware of the rule in question since the first days of August, 1914. Besides, the official declarations contained in the Orange Book presented to the States-General in October, 1915, and reproduced in the *Recueil de diverses communications du Ministre des Affaires Étrangères aux États-Généraux par rapport à la neutralité des Pays-Bas et au respect du droit des gens*, are certainly equivalent to a mention in the declaration of neutrality.

In the light of the above, the Netherlands Government find it difficult to take seriously the allegation that their attitude is equivalent to a real, though passive, coöperation in the submarine warfare. They can therefore only decline without hesitation the responsibility which His Britannic Majesty's Government declare their desire to impose

on them for all losses of British ships, trading to Dutch ports, which may have been obliged to forego their armament in order to be admitted.

Accept, etc.

J. LOUDON.

No. 15

*Mr. Balfour to Sir W. Townley*

*Foreign Office, July 17, 1917.*

SIR: I duly received your dispatch of the 20th ultimo, and have read with attention the note from the Netherlands Government inclosed therein, containing their reply to the arguments put forward in my dispatch of the 18th May against the exclusion of defensively armed merchant ships from Netherlands ports.

2. The Netherlands Government, after a summary of certain of those arguments, begin by asserting that they do not, in regarding such vessels as "assimilated to warships" for the purpose of applying their neutrality regulations, use the words in the sense in which they were used in the proceedings at the Second Hague Conference, but in a wider and less technical sense. They appear to have meant by the expression, in using it in their regulations, any ship which they might at any time choose to regard as assimilated to a warship, instead of meaning a ship such as had hitherto been generally considered as properly to be classed with warships. It seems unfortunate that they should, without making the fact clearer, use the term in such a sense in a set of published regulations which are based for the greater part on a Hague Convention, and the phrases of which one would naturally expect to be used in a sense conforming to that given them in discussions at the Hague Conference. The Netherlands Government virtually confess that the inclusion of defensively armed merchant ships within the definition of vessels "assimilated to warships," as used in their decree of neutrality, is an arbitrary decision, and there should therefore be no difficulty for them in varying the interpretation of the words which they have adopted.

3. M. Loudon does not dispute the fact, which was pointed out in my previous dispatch, that no neutral government during the present war, except possibly that of General Carranza in Mexico, have thought themselves bound to exclude armed merchant ships from their ports.

They can only point out that two countries with which the question of the admission of such vessels has not, so far as I am aware, been raised by any belligerent government, have not taken any public decision upon it; and that the United States Secretary of State, in a note advocating, in the interests of humanity, a compromise between the opposing belligerent groups in regard to their methods of naval warfare, expressed an opinion at variance with the ancient and settled practice of his own country. The Netherlands Government, therefore, can not contend that there is anything in the practice or theory of other countries to justify their attitude. The practice of those countries is universally contrary to the Netherlands practice. The theory, so far as it has been formulated, is opposed to the theory maintained by the Netherlands Government, except, indeed, in Germany, where, as so often, it has been hastily evolved, by order of the German Government, to suit the special interests of the country.

4. The Netherlands Government again contend that they have the duty of excluding armed merchant ships from their ports, because they could not otherwise insure respect for their neutrality. Their grounds for thinking this are totally inadequate. They endeavor to defend their rule by reference to the special situation of their country and to the effects of their rule in safeguarding Netherlands neutrality. They state that armed merchant ships are more capable than unarmed ships of committing in Netherlands ports acts of violence against the Netherlands and against enemy shipping; they maintain that armed ships are likely to be tempted to use their arms in a neutral port, and that their exclusion is an additional guarantee that Netherlands ports and waters will not be used as a base by one belligerent to the detriment of the other.

5. These arguments contain, it is fair to say, a modicum of truth, but they are quite insufficient to show the existence of a duty on the part of the Netherlands Government to deny facilities to armed merchant ships. Apart from the fact that the fears expressed as to the possible violent conduct of such vessels in neutral ports assume exceptional bad faith and lack of restraint on the part of the masters of the ships concerned, the arguments put forward apply to all neutral countries, and not specially to the Netherlands more than to other countries, the ports of which are used by merchant shipping of the opposing belligerents. They apply, too, with much greater force to warships than to defensively armed merchant ships. Yet it is doubtless recog-

nized by the Netherlands Government that a neutral country is under no obligation to exclude, in the interests of its neutrality, belligerent warships from its ports.

6. It is apparent from the foregoing that it is not the text of the neutrality proclamation which constrains the Netherlands Government, but merely the interpretation of it which has been adopted, and that they are not supported by the theory and practice of other countries, nor justified by special circumstances in denying to armed merchant ships access to their ports and waters. They have, as I anticipated, not ventured to contend that it is the principles of international law which require them to enforce such a rule. On what else do they rely? They claim that they are bound, if they are not to commit an unneutral act, to abstain from altering during the course of the war a rule of neutrality when once published, and point out that the British delegates at the Second Peace Conference maintained that no such alteration should be permitted, except in the direction of greater strictness.

7. This proposal was not, however, accepted by the Conference, and the principle which opposes alterations of any kind in published rules of neutrality is not even technically absolute. The appeal made to it by the Netherlands Government was, moreover, answered in my previous dispatch by an argument which they have totally ignored. I pointed out that "all the principles laid down at The Hague presupposed the conduct of hostilities by the belligerents in accordance with the laws of war," and that "they can not apply in their entirety in the presence of such circumstances as the ruthless destruction by enemy submarines of all merchant ships, whether neutral or belligerent, without warning," a condition of affairs in which "the power to exercise the right of self-defense becomes a matter of cardinal importance."

8. Perhaps the most serious fact with which the world is faced today is the abandonment by the German Empire, in its warfare at sea, of the rules of war and the morality which is the basis of international law. The Netherlands Government apparently do not think this retrogression towards the barbarous methods of ancient warfare worthy of a single word. Their adherence to a position, based on technicalities, which favors the German Empire's immoral methods would, even if those technicalities were not open to criticism as such, obviously be unfortunate, for it is evidently not calculated to help in restoring the outraged principles of international morality.

9. You will read this dispatch to the Netherlands Minister for Foreign Affairs, and will leave with him a copy.

I am etc.

A. J. BALFOUR.

No. 16

*Sir W. Townley to Mr. Balfour*

*The Hague, August 16, 1917.*

SIR: I have the honor to transmit herewith copy of the reply of the Netherlands Minister for Foreign Affairs to your dispatch of the 17th ultimo, on the subject of the exclusion of defensively armed merchant ships from Dutch ports, copy of which I left with his Excellency on the 25th ultimo, after having read it to him in accordance with the instructions contained in your above-mentioned dispatch.

I have, etc.

WALTER TOWNLEY.

Inclosure in No. 16

*M. Loudon to Sir W. Townley*

(Translation)

*The Hague, August 15, 1917.*

SIR: I have had the honor to receive from your Excellency copy of a note from the British Government dated the 17th July last, containing their observations in reply to my letter of the 18th June, 1917, regarding the regulation applied by the Queen's Government to armed belligerent merchant vessels.

In reply to these observations, I have the honor to bring the following to your Excellency's notice:

The Queen's Government did not say that in their declaration of neutrality they employed the expression "vessels assimilated to war-ships" in any sense other than that attached to it by the Second Peace Conference. They did say and they still maintain that the Conference did not attach to this expression any special meaning which would place it in the category of technical terms.

The British Government, to prove the contrary, refer to the proposal of their delegates relative to the definition of the term "auxiliary vessels." The passage from the Minutes quoted in the British Government's note of the 18th May last mentions that this proposal tended

to assimilate these auxiliary vessels to warships. The proposal was withdrawn, and as a result no definition was found in the law of nations for the term "auxiliary vessels." In these circumstances it is impossible to maintain that the incidental use of the expression "assimilated to warships" has made this expression a technical term.

It is true that the Dutch declaration of neutrality does not enumerate the categories of vessels which are assimilated to warships as regards their admission within Netherlands jurisdiction, but the British Government have since the beginning of the war been aware — through the precise information given to the British naval attaché, Captain Henderson, by my colleague the Minister of Marine in person in August, 1914 — that the Queen's Government included armed belligerent merchant vessels in the expression "vessels assimilated to warships." This interpretation did not at the time evoke any protest from the British Government, who moreover in their regulations for prize court procedure likewise assimilate armed vessels to warships (Prize Court Rules, 1914, Order I).

The Queen's Government can not recognize that a modification of the interpretation of their neutrality declaration would be in itself less serious from the point of view of neutrality than modification of the declaration properly so called or of a rule enacted to meet cases not provided for in the declaration.

The law of nations does not prescribe for neutrals the duty either of admitting armed belligerent merchant vessels within their jurisdiction, or of refusing them entry. It leaves them to determine for themselves their line of conduct on this point. The British Government can not therefore contest, nor have they moreover contested, the legitimacy of the Netherlands regulation. But they reproach the Netherlands Government with being the only neutral government to adopt such an attitude. I have already had the honor of pointing out to your Excellency that this is not quite exact, certain neutral Powers having made no pronouncement on this subject, and the United States Government, in a note dated the 18th January, 1916, having clearly expressed themselves in the sense that armed merchant vessels should be treated by neutrals as warships (cf. the State Department's publication entitled "European War," No. 3, pp. 163, 164).

The British Government set aside this declaration of the United States Government on the pretext that it was expressed in a note conceived with a conciliatory object. It is true that the United States

Government addressed their note to the Allied Governments in a spirit of conciliation, but of course in the sense that they were proposing, in the interests of humanity, that the belligerents should conform on both sides to the prescriptions of international law as understood by the United States. They expressly added that they were convinced of the justice of the view that armed merchant ships should be treated by neutrals as warships.

The British Government do not think it necessary to attach any importance to the arguments put forward by the Queen's Government to prove that the Netherlands regulation was necessary in order to insure the neutrality of Dutch territory.

They do not refer to the most important contingencies which I mentioned to your Excellency under this head as being likely to threaten the integrity of the domain under the jurisdiction of the Netherlands. They do not appear to wish to recognize the fact that these contingencies might have a particularly serious character owing to the geographical position of the Netherlands, between Great Britain and Germany — a position in which no other neutral in the same measure stands.

They confine themselves to considering the case which is the least to be apprehended — that of an act of violence due to the bad faith and lack of self-restraint of the captain of an armed merchant vessel.

The British Government can not, however, refuse to admit that one of the first duties of the Queen's Government was to insure the integrity of their territory, and that this integrity would be seriously endangered if one of the other contingencies to which I alluded happened to occur. In these conditions it was their duty to exclude all belligerent vessels.

The British Government can not justifiably contest either the legitimacy of the Dutch regulation, or, if they would place themselves for a moment in the standpoint of the Netherlands, the gravity of the reasons which caused them to adopt it. They can not, furthermore, maintain that the modification of a rule of neutrality during the war would not be contrary to the law of nations, seeing that they have themselves done the opposite in a memorandum addressed to the United States Government on the 23d of March, 1916, in which it is textually stated: "Such a modification indeed would be inconsistent with the general principles of neutrality as sanctioned in paragraphs 5 and 6 of the preamble to the 13th Convention of The Hague concerning maritime neutrality" ("European War," No. 3, p. 188).

Your Excellency's Government would seem to be of the opinion that the Netherlands Government should nevertheless depart from their present line of conduct in order to show how much they condemn the method by which the German navy carries on war.

Whatever may be their personal opinion on this last point, an opinion that they are not called upon to express to the British Government, the Netherlands Government consider that it would be contrary to a just conception of neutrality if they allowed themselves to be influenced by a consideration of this nature to modify their rules of neutrality or the interpretation of these rules as established by them. In conformity with the standpoint in which they have always placed themselves, towards Great Britain as well as others, the Queen's Government do not set themselves up in judgment upon the measures taken by the belligerents to do harm to one another. They only protest against these measures in so far as they injure the rights of neutrals. The protests, which they have never failed to make, especially as regards submarine warfare, are a proof of this.

J. LOUDON.

No. 17

*Mr. Balfour to Sir W. Townley*

*Foreign Office, September 8, 1917.*

SIR: In your dispatch of the 16th ultimo, you transmitted to me a copy of a reply which you had received from the Netherlands Minister for Foreign Affairs to the observations contained in my dispatch of the 17th July in regard to the refusal of the Netherlands Government to admit defensively armed merchant vessels into Dutch ports.

It is apparent that further detailed argument on the subject would serve no useful purpose, and I wish only to draw attention to the most obvious general conclusions which emerge from the correspondence which has passed between His Majesty's Government and the Netherlands Government.

In the first place, the Netherlands Government have been unable to show that they do not stand alone among neutral governments, save for the doubtful exception of General Carranza's administration in Mexico, in adopting a rule excluding defensively armed merchant ships from their ports. They attempt to derive comfort from the fact that the Governments of Sweden and Denmark have not had



occasion to make their views known and from certain observations made in an informal letter addressed by the United States Secretary of State on the 18th January, 1916, to the diplomatic representatives of the Allied Governments in Washington. A few remarks must be made with regard to this letter.

It was written, as a perusal of it shows, with the object of bringing about, if possible, by agreement a cessation of the attacks made by German submarines without warning on merchant ships of the Allied and neutral countries and a confinement of submarine warfare within the limits imposed by the general rules of international law and the principles of humanity. Mr. Lansing suggested that the Allied Governments might be willing, in order to achieve this end, to accept a rule under which merchant vessels of belligerent nationality should be prohibited from carrying armament. Such an agreement would have involved the abandonment of the rule followed and upheld by the United States since the creation of the republic. His note concluded with the words "my government is impressed with the reasonableness of the argument that a merchant vessel carrying an armament of any sort, *in view of the character of submarine warfare and the defensive weakness of undersea craft*, should be held to be an auxiliary cruiser and so treated by a neutral as well as by a belligerent government, and is seriously considering instructing its officials accordingly." The sentence was no doubt intended as an indication that, unless the suggested compromise were seriously considered, armed merchant ships might in the future be excluded from United States ports. The Netherlands Government, in quoting Mr. Lansing merely as saying that he "was convinced of the justice of the view that armed merchant ships should be treated by neutrals as warships," are obviously misrepresenting him.

The agreement suggested by Mr. Lansing was not acceptable to the Allied Governments, and the United States Government shortly afterwards, in a memorandum dated the 25th March, 1916, put on record their view of the legal status of armed merchant ships, which was entirely consonant with the traditional practice of the United States in treating such vessels as ordinary merchantmen; this practice had already, since September, 1914, been put into force during the present war.

The second important observation suggested by the correspondence is that the Netherlands Government have not attempted to answer

the argument of His Majesty's Government that the discussions at the Second Peace Conference, including the contention of the British delegates that it should not be permissible to alter during the course of a war a rule of neutrality once laid down, presupposed the conduct of war by belligerents in accordance with the rules of international law, the flagrant violation of which is, as a matter of fact, an essential feature of the German submarine warfare. This circumstance obviously deprives of all force the appeal of the Netherlands Government, sufficiently weak in itself, to technical legal objections to a modification of their unparalleled regulation.

You should communicate a copy of this dispatch to the Minister for Foreign Affairs, informing him that His Majesty's Government, while deeply regretting the attitude maintained by the Netherlands Government, do not propose for the present to continue the discussion of the question at issue.

I am, etc.

A. J. BALFOUR.

No. 18

*Sir W. Townley to Mr. Balfour*

*The Hague, October 23, 1917.*

SIR: In compliance with your instructions, I duly communicated to the Netherlands Minister for Foreign Affairs a copy of your dispatch of the 8th ultimo in regard to the refusal of the Netherlands Government to admit defensively armed merchant vessels into Dutch ports. I at the same time informed his Excellency that His Majesty's Government, while deeply regretting the attitude maintained by the Netherlands Government, do not for the present propose to continue the discussion of the question at issue.

I have now the honor to transmit copy of M. Loudon's reply containing the comments of the Netherlands Government on the various points raised in your above-mentioned dispatch and adhering to the view expressed by His Majesty's Government that a further discussion of this question would present no advantage.

I have, etc.

W. TOWNLEY.

Inclosure in No. 18

*M. Loudon to Sir W. Townley*  
(Translation)

*The Hague, October 22, 1917.*

SIR: In your note of the 13th September last your Excellency was good enough to communicate to me a copy of a note from the Secretary of State for Foreign Affairs, dated the 8th September, respecting the admission of armed merchant vessels of the belligerents into Netherlands ports, which contained the reply to the note which I had addressed to you on the 15th August last.

In that note I had again set out the reasons which made it the duty of the Queen's Government to maintain the decision which they had taken in the matter at the beginning of the war. Since the Secretary of State refrains from replying to it, so far as the main question is concerned, I may restrict myself to making the observations suggested to me by the two particular points raised by Mr. Balfour.

In the first place, I must point out that the British Government have not justified their assertion that the Queen's Government are the only neutral government to consider that there are serious reasons against admitting armed merchant ships of the belligerents into neutral ports.

Of the three countries (Denmark, Norway, and Sweden) of which the geographical position in relation to the theater of war can in a measure be compared with that of the Netherlands, two, Denmark and Sweden, have not expressed their views on the subject. The Government of the United States of America admitted such vessels, subject to certain restrictions, into their ports. But the publications of the Department of State show that that government entertained grave doubts as to whether any admittance of such ships was not incompatible with a strict observance of the duties of neutrality. Thus it appears from the paper "European War," No. 2, pp. 41-42, that in order to remove the preoccupation of the American Government in the matter, the British Government assented to the British armed merchant ship *Merrion*, which had arrived in a port in the United States, disembarking her guns before putting to sea. It is known, moreover, that for the same reason no British armed merchant ship called at a port in the United States for a period of about a year after the case of the *Merrion* and that of the *Adriatic*, which is also referred to in the above-men-

tioned document (pp. 41-42). The same paper contains (pp. 45-46) a letter in which the United States Government, while fully admitting that a merchant ship has the right to arm for purposes of self-defense, make it known that they disapprove of a practice which compels a neutral to express an opinion as to the intended use of a vessel, and thus to incur responsibility in the event of this opinion subsequently proving wrong. In these circumstances, it is all the more difficult to maintain that the Queen's Government have wrongly interpreted the words "my government is impressed with the reasonableness of the argument that a merchant vessel carrying an armament of any sort, in view of the character of submarine warfare and the defensive weakness of undersea craft, should be held to be an auxiliary cruiser and so treated by a neutral as well as by a belligerent government," which show clearly that in the opinion of the United States Government an attitude of the kind adopted by the Netherlands since the outbreak of the war was reasonable.

In the second place, the Secretary of State affirms that the Queen's Government have not even attempted to contest the argument of the British Government setting aside the applicability of the rule that a neutral Power should not modify its neutrality regulations in the course of a war except to render them more strict. The British Government consider that the Queen's Government could rightly neglect this rule on the ground that the Second Peace Conference only laid it down on the supposition that belligerents would conduct war in a manner conforming to international law.

I venture to recall to your Excellency that I have already contested this argument, especially at the end of my note of the 15th August. I am not aware that the conventions of The Hague or general international law contain a rule, or the records of the Second Peace Conference even an indication, that a neutral state should alter its neutrality regulations in favor of one belligerent party because of the manner in which his opponent conducts war. As for the fact that the warlike operations of one belligerent injure the rights and interests of the neutral, it is for the neutral to decide without any intervention on the part of the other belligerent, whether the fact gives him occasion to depart from the state of neutrality which he has announced.

Agreeing with the view of the British Government that the discussion of this question should be closed, I have, etc.

J. LOUDON.

## No. 19

*Mr. Balfour to Sir W. Townley*

*Foreign Office, November 14, 1917.*

SIR: I have received your dispatch of the 23d ultimo, inclosing a copy of a note from the Netherlands Minister for Foreign Affairs replying to the observations contained in my dispatch of the 8th ultimo with regard to the refusal of admittance of defensively armed merchant ships into Dutch ports.

I had not intended to extend the correspondence on this subject, seeing that all the arguments by which the Netherlands Government have attempted to show that there is a duty upon them to exclude such vessels from their ports have already been exhaustively discussed. It is necessary, however, to make a few observations in reply to M. Loudon's last note, since it attributes to His Majesty's Government an attitude which they have never taken up, and it is essential that this should not pass uncorrected.

His Majesty's Government have never asserted, as alleged by the Minister for Foreign Affairs, that no neutral state but the Netherlands considered that there were serious reasons against the admission into neutral ports of merchant ships of the belligerents carrying defensive armament. They have merely pointed out that "during the present struggle no other neutral government (except perhaps that of President Carranza in Mexico) has found itself obliged by the rules of international law to deny the use of its ports to such vessels," and that "no state has hitherto thought it necessary to adopt the attitude which the Netherlands Government are adopting now." These statements were and are perfectly correct, and all that M. Loudon has said in reply to them leaves them standing in every particular. The Minister for Foreign Affairs attempts to defend the attitude of his government by reference to some hesitation which was at one time expressed by the United States Government when neutral. His Majesty's Government desire nothing better than the adoption by the Netherlands of the doctrine and practice of the United States as neutrals in this matter.

I need say little in reply to the concluding passages of M. Loudon's note. His Majesty's Government have, of course, never contended that there is any rule of international law which compels the Netherlands Government to reverse their policy. They have merely con-

tended, and I trust have established, that the Netherlands rule is unnecessary and unneutral, and that the government is under no obligation to maintain it. The practice of the numerous other neutral governments who have had to consider the question during the present war shows that, with the doubtful exception of General Carranza's Government, they one and all share the view that action upon the lines taken by the Netherlands Government is not incumbent upon a neutral state.

I request that you will communicate the foregoing remarks to the Minister for Foreign Affairs.

I am, etc.

A. J. BALFOUR.

#### APPENDIX

##### *Article 4 of Netherlands Proclamation of Neutrality*

(Translation.)

"Warships of a belligerent and vessels of a belligerent assimilated to warships shall not be admitted within the jurisdiction of the State."